

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: January 8, 2016

A handwritten signature in dark ink, appearing to read "T E Carlson".

THOMAS E. CARLSON U.S. Bankruptcy Judge

NORTHERN DISTRICT OF CALIFORNIA

In re)	Bankruptcy Case
)	No. 04-33526-TC
DEMAS WAI YAN,)	
)	Chapter 7
)	
Debtor.)	
)	
DEMAS WAI YAN,)	Adversary Proceeding
)	No. 12-3129-TC
Plaintiff,)	
)	
v.)	
)	
TONY FU, ET AL.,)	
)	
Defendants.)	

ORDER DENYING LEAVE TO SUE TRUSTEE

On January 8, 2016, the court held a hearing on the motion filed by Tony Fu and Bryant Fu seeking leave to sue Trustee Janina Hoskins. Tony and Bryant Fu appeared *in pro per*. Janina Hoskins, who is an attorney, appeared on her own behalf.

The motion is denied with prejudice. The court determines that the moving parties should not be permitted to sue Trustee in any court, because they have not alleged any legally cognizable damage from Trustee's alleged acts.

The allegations against Trustee in the moving parties'

1 proposed complaint boil down to the following: (1) Trustee did not
2 take adequate steps to prevent Demas Yan from filing lawsuits
3 against the moving parties that were frivolous because the claims
4 Yan asserted in those lawsuits belonged to the bankruptcy estate;
5 (b) Trustee failed to recover assets of the estate that had been
6 concealed by Debtor Demas Yan; and (c) Trustee failed to post an
7 adequate bond.

8 Although at least some of Yan's lawsuits violated the
9 automatic stay, the moving parties do not have standing to
10 complain of those violations. This is so, because the moving
11 parties do not complain of the violations of the automatic stay in
12 the role of creditors of the estate whose dividends have been
13 diminished by those violations. Moving parties complain of the
14 stay violations in the role of defendants in Yan's lawsuits. The
15 Ninth Circuit has held that the automatic stay is intended to
16 protect the bankruptcy estate, not third parties, and recognizes
17 no claim for damages in the moving parties' situation. Magnoni v.
18 Globe Investment and Loan Co., Inc. (In re Globe Investment and
19 Loan Co., Inc.), 867 F.2d 556, 559-60 (9th Cir. 1989).

20 Trustee's duties to recover assets of the estate and to post
21 an adequate bond serve only to ensure that creditors of the estate
22 receive appropriate payment of their claims against the estate.
23 See 11 U.S.C. § 704. In the present case, creditors suffered no
24 harm from Trustee's alleged failure to recover concealed assets,
25 from Trustee's alleged failure to post an adequate bond, or from
26 Yan's stay violations, because creditors were paid in full and a
27 surplus returned to Debtor.

28 The complaint alleges that Debtor Demas Yan boasted that he

1 had bribed Trustee to abandon surplus property to him after
2 allowed claims were paid in full. Although it is not necessary to
3 address this allegation to resolve the motion, I note that such
4 abandonment is the normal application of the law upon the close of
5 a case (11 U.S.C. § 554(c)), that the pre-petition legal actions
6 that Yan improperly attempted to assert during the case were by
7 court order not abandoned to Yan at the close of the case, and
8 that the only evidence of the alleged bribe is an out-of-court
9 statement reporting an out-of-court statement by Debtor Yan, who
10 has been conspicuously untrustworthy in his conduct in this case.

11 **END OF ORDER**
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COURT SERVICE LIST

Demas Wai Yan
1433 7th Avenue
San Francisco, CA 94122

Tony Fu
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San Francisco, CA 94121

Notice Recipients

District/Off: 0971-3

User: dchambers

Date Created: 1/8/2016

Case: 12-03129

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Recipients submitted to the BNC (Bankruptcy Noticing Center):

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TOTAL: 2